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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,301	10/10/2000	Juergen Schlegel	MFA-11902/04	2357

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EXAMINER

WEJER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/508,301

Applicant(s)

SCHLEGEL ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "in particular, for preserving.....and ham" is indefinite in that it is not clear whether the claim is limited to this narrower limitation or the broader limitation of "fresh meat." Also, "the removal of the oxygen" and "the removal rate" lack antecedent basis.

In claim 2, the phrase employing "in particular..." is indefinite in that it is not clear whether the claim is limited to this narrower limitation or the broader limitation (e.g. "sliced pieces"). The use of the alternative expression "and/or" is confusing. Also, it is not clear what is encompassed by the terminology "consumer portions." Also, "the sealed-off space" lacks antecedent basis.

In claim 3, "the oxygen atmosphere" lacks antecedent basis. The phrases employing "in particular..." and "preferably" are indefinite in that it is not clear whether the claim is limited to one of these narrower limitation or the broader limitation, and if limited to the narrower limitations, which one. The use of the alternative expression "and/or" is confusing.

In claims 4-8 and 11, the phrases employing "in particular..." and "preferably" are indefinite in that it is not clear whether the claim is limited to one of these narrower limitation or the broader limitation, and if limited to the narrower limitations, which one. The use of the alternative expression "and/or" is indefinite.

In claim 9, the use of the alternative expression "and/or" is indefinite.

In claim 10, "the gas mixture" and "the ambient atmosphere" lack antecedent basis.

In claim 12, "the chilled state" lacks antecedent basis. Also, the phrases employing "in particular..." and "preferably" are indefinite in that it is not clear whether the claim is limited to one of these narrower limitation or the broader limitation, and if limited to the narrower limitations, which one.

In claims 13 and 14, it is not clear whether the narrower limitation employing "in particular" is an actual claim limitation or whether a broader limitation is considered.

In claim 14, the use of the alternative expression "and/or" is confusing.

Claim 15 is confusing in that it provides numbering to apparatus parts which differs from that in claim 14. Also, the use of the alternative expression "and/or" is confusing. In addition, "the ends" lacks antecedent basis.

In claim 16, it is not clear whether the narrower limitation employing "in particular" is an actual claim limitation or whether a broader limitation is considered. Also, the use of the alternative expression "and/or" is confusing. In addition, "the housing door" lacks antecedent basis. Claim 16 is further confusing in that it provides numbering to apparatus parts which differs from what is employed in other claims.

In claim 17, the phrases employing "in particular..." and "preferably" are indefinite in that it is not clear whether the claim is limited to one of these narrower limitation or the broader limitation, and if limited to the narrower limitations, which one. Also, the use of the alternative expression "and/or" is indefinite.

Art Unit: 1761

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Verhaag et al.

Verhaag et al discloses treating meat material for preservation by subjecting same to an essentially oxygen atmosphere (e.g. at least 93% purity) under the pressure and time as called for in the instant claims and wherein said process includes a step of controlled removal of oxygen. It should be noted further that Verhaag et al discloses treating the meat material with oxygen at a non-freezing temperature (e.g. 3 C). Based on the controlled process of removing the oxygen, it is considered inherent that bubbling would not occur.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verhaag et al taken together with Follett.

Verhaag et al further discloses storage times which read on those of the instant claims.

If it is shown that the process of Verhaag et al would not inherently result in avoiding bubble formation, it would have been obvious to have controlled said oxygen in

Art Unit: 1761

such a manner as to avoid same as taught, for example, by Follett. Follett teaches removing oxygen from a treatment of meat wherein undesirable frothing or bubbling on the surface of the meat is avoided. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such step to provide a better preserved meat material.

The claims call for treatment of slices of meat. Although Verhaag et al is silent concerning same, Follet teaches same (i.e. meat cuts). It would have been further obvious to have treated pieces as a matter of preference.

As for the rate of oxygen provided, it would have been further obvious to have determined same through routine experimental optimization absent a showing of unexpected results.

4. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Verhaag et al.

Verhaag et al discloses the apparatus as claimed including a housing with air-tight sealable opening, inlet and outlet orifices with solenoid valves, oxygen generator, and an electronic control unit.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for


Art Unit: 1761

the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
April 4, 2003


4/4/03